

ENTERED

May 12, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

LUIS ALBERTO BARAJAS, §
Petitioner, §
§
v. § Civil Action No. 1:15-CV-188
§
UNITED STATES OF AMERICA, §
Respondent. §

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the Magistrate Judge's Report and Recommendation (Dkt. No. 17) regarding Luis Alberto Barajas's 28 U.S.C §2255 Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Dkt. No. 1). On April 8, 2016, Luis Alberto Barajas (hereafter referred to as "Petitioner") filed his Opposition to Magistrate Judge's Report and Recommendation (Dkt. No. 20). Petitioner argues that he suffered from ineffective assistance of counsel during the pleading and sentencing stages of his criminal proceeding. Case Number 1:12-CR-984-1. Specifically, Petitioner argues that in spite of affirming to the Court that he had been fully advised of the consequences of his guilty plea and that he was satisfied with his counsel's performance, he was not made fully aware by counsel that relevant conduct not charged in the indictment could be considered in calculating his applicable guideline range. *See* (Dkt. No. 20). Additionally, Petitioner argues that his counsel erred when he did not object to certain factors being considered during the sentencing phase, which were not included in the criminal indictment. *Id.*

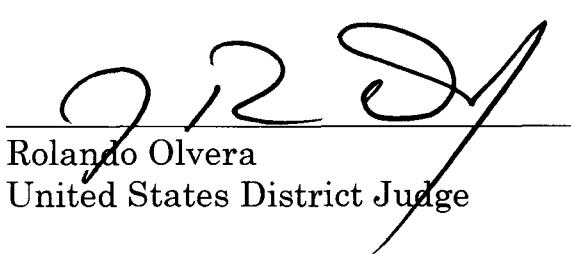
As the Magistrate Court correctly notes in the Report and Recommendation, the sentencing court "made sure the agreement's terms were clearly known to Barajas, and elicited testimony that his attorney explained those term to him and that he understood them." Magistrate Judge's Report and Recommendation (Dkt. No. 17). Further, the Magistrate Judge notes that the Petitioner answered in the

affirmative when the Court asked Petitioner if he was aware that “his sentence could differ from the parties’ understanding of the applicable guideline range, that his sentence would be based upon the findings of fact of his specific case, and that the ultimate decision would be made by the Court and not based upon an agreed sentence.” *Id.*; *see also* CR Dkt. No 54 at 31-34. Moreover, as the Magistrate Judge properly notes, there is a strong presumption that counsel performed adequately, and made decisions using reasonable professional judgement. (Dkt. No. 17 at 5); *see also Strickland v. Washington*, 466 U.S. 668, 689 (1984). Taking all of this into consideration, this Court finds no basis for Petitioner’s claim of ineffective assistance of counsel.

This Court also finds merit in the Magistrate Judge’s recommendation for dismissal of Petitioner’s additional arguments regarding ineffective assistance of his appellate counsel, and the constitutionality of his guilty plea and Rule 11 hearing, for the reasons stated in the Magistrate Judge’s Report and Recommendation.

For the foregoing reasons, the Magistrate Judge’s Report and Recommendation is **ADOPTED**. It is therefore **ORDERED, ADJUDGED, and DECREED** that Petitioner’s §2255 Motion (Dkt. No. 1) be **DISMISSED** with prejudice. A certificate of appealability shall not issue. The Government’s Response to Petitioner’s 28 U.S.C. §2255 Motion and Motion for Summary Judgement (Dkt. No 15) is **DISMISSED** as moot.

Signed on this 12th day of May, 2016.


Rolando Olvera
United States District Judge